

APPEAL NO. 020263
FILED MARCH 8, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Texas Workers' Compensation Commission Appeal No. 012125, decided October 25, 2001, reviewed a hearing that was conducted on August 2, 2001, and remanded the case for the hearing officer to make the necessary findings of fact and conclusions of law to resolve the disputed question of whether the appellant (claimant) had disability resulting from the November 22, 2000, injury. A hearing on remand was convened on December 20, 2001. The hearing officer determined that the claimant had disability on _____, and from December 5, 2000, through March 12, 2001. Additionally, as requested in Appeal No. 012125, the hearing officer found that the claimant's average weekly wage (AWW) is \$291.58; that the claimant voluntarily elected to use vacation and sick time during December 2000, January 2001, and February 2001, in order to receive pay while he was not working due to his injury; that the claimant was paid \$1,084.50 by the employer from December 2000, through February 2001; and that the amount of temporary income benefits (TIBs) to be paid to the claimant should be offset by the post-injury earnings (\$1,084.50). On appeal, the claimant expresses disagreement with the hearing officer's findings relating to reduction of TIBs and dates of disability. Additionally, the claimant contends that the issues of AWW and TIBs should not have been addressed on remand because they were not addressed at the initial hearing, and that the respondent (carrier) should not have been allowed to present evidence at the hearing on remand. The carrier urges affirmance.

DECISION

Affirmed.

With regard to the claimant's contentions that the carrier should not have been allowed to present evidence at the hearing on remand, and that the issues of TIBs and AWW should not have been addressed on remand, we note that our decision in Appeal No. 012125 explicitly directed that the hearing officer:

[f]urther develop the record in order to determine if the claimant did or did not voluntarily elect to use his sick and annual leave. In the event that it is determined that the claimant did not voluntarily elect to use the time, the claimant will be entitled to benefits for the determined period of disability. Should the hearing officer determine that the claimant voluntarily elected to use the time, the hearing officer should additionally determine the amount of wages received by the claimant by using his leave time and, if that amount is less than the amount of regular wages that he would have earned for the same period, the claimant will be entitled to benefits reflecting the difference of the two amounts.

Under the particular facts of this case, it was crucial for the hearing officer to address the issues of AWW and TIBs in order resolve the disability issue accurately. We perceive no error in the hearing officer's development of the record in order to obtain the information necessary to make the disability determination.

The hearing officer did not err in determining that the claimant had disability on _____, and from December 5, 2000, through March 12, 2001, and that the amount of TIBs to be paid to the claimant should be reduced by the amount of his post-injury earnings. These matters involve credibility and fact issues, which were for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. We have reviewed the complained-of determinations and conclude that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER
1616 S. CHESTNUT
LUFKIN, TEXAS 75901.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge